IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

WP(C).No. 10768 of 2007(F)

PETITIONER:

WEST COAST PETROLEUM AGENCY,
HPC DEALER, CHELMBRA, MALAPPURAM DISTRICT,
REPRESENTED BY ITS PARTNER P.KOYAKKUTTY.

BY ADV. SRI.TOM K.THOMAS

RESPONDENTS:

1. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES PROVIDENT FUND
ORGANIZATION, SUB REGIONAL OFFICE,
ERANHIPALAM P.O., CALICUT- 673 076.

2. THE EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL, NEHRU PALACE,
NEW DELHI- 100 049.

BY SHRI.THOMAS MATHEW NELLIMOOTTIL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.10768 of 2007

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Dated this the 4th day of April, 2007

J U D G M E N T

The petitioner is a dealer of petroleum products under the Hindustan Petroleum Corporation Ltd. (HPC). Formerly the establishment was run by the HPC themselves employing their own employees. They changed the system and gave dealership to the petitioner temporarily to run the petrol pump. When the establishment was run by the HPC the establishment was covered under the Employees' Provident Funds and Miscellaneous Provisions Act. The petitioner's contention is that since his is a separate establishment employing less than 10 employees, he is not liable to be covered under the Act and to pay contributions. In spite of the same, by Ext.P1 order under Section 7A of the Act, contributions have been demanded from him. Against the same, the petitioner has filed Ext.P2 appeal. The petitioner is aggrieved by the coercive proceedings for recovery of the amounts covered by Ext.P1, while Ext.P2 is pending.

2. The learned Standing Counsel appearing for

the Provident Fund Organization submits that the petitioner is only a dealer appointed by the HPC who owns the establishment and there is only a change in the personnel and not in the establishment itself. Since it was covered once, as per the Employees' Provident Funds and Miscellaneous Provisions Act, it continues to be covered even if the number of employees falls below 10. I am not inclined to go into the rival contentions in the writ petition in so far as Ext.P2 appeal is pending before the Tribunal. However, I do not think that the petitioner can be granted an absolute stay pending the appeal.

3. In the above circumstances, this writ petition is disposed of with a direction to the 1st respondent to keep further recovery proceedings in abeyance till the disposal of Ext.P2 appeal on condition that the petitioner pays 50 per cent of the amount demanded within one month from today.

Sd/-
sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.